

OLC 68-0076
26 January 1968

OGC Has Reviewed

MEMORANDUM FOR THE RECORD

SUBJECT: S. 2778 - Federal Security Act

1. S. 2778, the "Federal Security Act," was introduced by Senator Everett Dirksen (R., Ill.) on 13 December and, at his unanimous consent request, referred to the Government Operations Committee. The bill provides a statutory program for determining the loyalty of Federal civilian employees and the trustworthiness of contractor representatives, hearing and reviewing adverse findings, and coordinating loyalty and security programs within the Government. The introduction of S. 2778 and similar bills has apparently been prompted by United States vs. Robel concerning the employment of an admitted Communist in a defense plant. The genesis of the bill, however, dates back to the report of the Commission on Government Security (1957).

2. Definitions. The bill is of general applicability and applies to the Agency as well as other members of the intelligence community (Sec. 2(5)). While Central Intelligence Agency and National Security Agency civilian officers and employees are specifically excepted from the term "civilian employee" (Sec. 2(7)), this exception does not apply to applicants (Sec. 2(8)) or contractor representatives (Sec. 2(17)). Military members of the Armed Forces are not covered by the bill. The security classification "confidential" is excluded from the definition of classified information (secret, top secret, atomic secret, atomic top secret) and is consistent with the Commission on Government Security recommendation in 1957 to dispense with the "confidential" classification (Sec. 2(15)). A "national agency check" requires reference to appropriate files of intelligence agencies and committees or subcommittees in the Congress (Sec. 2(18)).

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3. Central Security Office. The core of the program is the "Central Security Office" staffed with a Director, Assistant Director for Hearings, an Assistant Director for Administration, and a Central Review Board -- all to be appointed by the President with the advice and consent of the Senate and removable only for inefficiency, neglect, or malfeasance. Other personnel include Hearing Examiners. The Office is at the center of a Government-wide security coordination program, the Hearing and Review procedures relating to loyalty and security questions and hearings held in connection with the designation of subversive organizations by the Attorney General.

4. Coordination. This program includes periodic conferences of security officers of executive agencies (Sec. 20(b)) as well as surveys and inspections of the regulations, practices and procedures used by executive agencies in their security programs, including: forms, screening practices and procedures, training programs, manuals on methods to safeguard information, and both classification and declassification programs (Sec. 21).

A. While the authority to examine documents or files is limited, the purpose of the inspection is to assure that security practices and procedures are in accord with statute, executive order, and rules and regulations promulgated under Sec. 24(b) by the Director of the Office on uniformity in application and administration of all loyalty and security programs (Sec. 21(b)). The Director of the Office is also required to recommend to executive agencies such changes as he determines necessary or advisable in the interest of uniformity, simplicity, effectiveness, and economy (Sec. 22(c)) and to make determinations concerning "overclassification" and "declassification."

B. The Director of the Office also performs as a central clearing house for complaints by Government contractors on security requirements imposed by executive agencies. These are to be remedied through the process of consultation and recommendation (Sec. 22).

C. A further requirement is imposed to compile statistics on the results of each loyalty and security program administered or supervised by executive agencies. Because of the definition given to the term civilian employee, neither CIA or NSA would be required to report the number removed from Federal service on loyalty grounds or the number who resigned after being

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advised of derogatory information on loyalty. However, CIA and NSA are subject to a number of other statistical requirements pertaining to loyalty of applicants, disposition of advisory recommendations, and reporting of derogatory subversive information to the FBI (Sec. 23).

D. Finally, the Director of the Office must, in annual reports to both the President and the Congress, describe each loyalty and security program in effect including a detailed statistical analysis of the results of the operation of each program and such recommendations as he may have for its improvement. If requested by the President, the Congress, or any duly authorized committee or subcommittee, the Director of the Office is required to make a special report concerning the operation of any loyalty and security program. Each executive agency is required to compile and transmit information which the Director determines is necessary to fulfill these reporting requirements (Sec. 25).

5. Hearing and Review. The second role of the Central Security Office is to participate in connection with adverse findings on loyalty (Federal employees) or security (contractor representatives) cases as a hearing and review mechanism. In this capacity the Central Office acts in an advisory capacity to the agency head whose determination is final and conclusive (Sec. 93(a)).

A. In the case of Federal civilian employees or applicants, the bill treats solely with the question of loyalty. Suitability is to continue to be governed by Section 6 of the Lloyd-La Follette Act (1912) from which CIA is exempted or other applicable provisions of law (Sec. 41(e)) and not this bill. However, the bill makes a positive requirement for an investigation to determine both loyalty to the U.S. Government and suitability for service in a particular position prior to appointment or employment (Sec. 40(a)). Outside of the competitive service the investigation is performed by the executive agency concerned, but if there is no investigative organization, by the Civil Service Commission. All derogatory subversive information must be referred to the FBI for a full field investigation which is defined in the bill (Sec. 2(19)).

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B. Evaluation. The next step in the loyalty process is an evaluation, by a "screening officer" in the agency concerned, against the standard that "there is reasonable doubt as to the loyalty of the individual to the U.S. Government (Sec. 70(a)). This, then, can lead to the following:

- (1) opportunity for interview with the screening officer (Sec. 41(b));
- (2) letter of charges to individual as specific and detailed as national security permits reviewed by a legal officer in the agency before issuance (Sec. 41(c));
- (3) hearing before hearing examiner Central Security Officer (Sec. 42(a)),
 - (a) right of counsel (Sec. 83),
 - (b) right of confrontation (Sec. 84) unless head of investigative agency determines it will prejudice national security to produce "regularly established confidential information engaged in obtaining intelligence and internal security information for the Government (Sec. 84(b)),
 - (c) Subpoena (Sec. 85);
- (4) determination by agency head based on record of hearing and written notice of outcome to the individual (Sec. 42(a));
- (5) request from individual to agency head for review (Sec. 42(d));
- (6) hearing before Central Review Board of Central Security Office (Sec. 90);
- (7) recommendation by Central Review Board and final determination by agency head (Sec. 93).

6. Industrial Personnel Security Program. Similar procedure is followed in the case of contractor personnel except the standard is whether the possession of any security clearance will endanger the common defense and security (Sec. 71(a)). The industrial security program in this bill is similar to that proposed in H. R. 14645 and is not commented upon here, but is commented upon in attachment B.

7. Conclusion. Although CIA and NSA civilian employees are OGC
exempted from the term civilian employee as used in the bill, many aspects 25X1
of the bill have a significant impact on the Agency's security program. The
Director of Security's area of concern with the bill is set forth in attach-

[Redacted] That this was
not contemplated is supported in the report of the Commission on Govern-
ment Security (June 1957) which stated in commentary on the exception of
the CIA and the NSA from the proposed loyalty program:

" (Protection accorded the Government) . . . should not be
disturbed except in those instances where the national security
interests are so great and the consequences of error could be
so devastating, that extraordinary authority and powers must
be given to the agencies involved.

"From its review of the mandates, responsibilities, and
operations of the executive departments and agencies, the
Commission has concluded that the exceptional authority to
depart from the procedures of the loyalty program should
extend only to the Central Intelligence Agency and the
National Security Agency. . . . " (Page 51).

SIGNED

[Redacted]
Office of Legislative Counsel

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Attachments:

- A. S. 2778
- B. Memo for Record on H.R. 14645
dtd 23 Jan 1968
- C. Memo from Director of Security
dtd 15 Jan 1968

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